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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,491	08/24/2001	Anthony Robin White	PH41	3293
26841	7590	04/15/2005	EXAMINER	
MARK P. BOURGEOIS P.O. BOX 95 OSCEOLA, IN 46561			MCCORMICK EWOLDT, SUSAN BETH	
		ART UNIT		PAPER NUMBER
		1654		

DATE MAILED: 04/15/2005

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Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT PAPER

0305

DATE MAILED:

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Commissioner for Patents

REQUIREMENT FOR INFORMATION UNDER 37 CFR 1.105

In view of the recent *In re Elsner* decision, the Office is requesting information regarding the clematis plant 'Avalanche'.

Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

The information is required to determine when the claimed plant variety, 'Avalanche', was publicly available prior to the filing date of the instant application.

In response to this requirement please provide:

- a) a copy of any plant breeder's rights applications, published proposed denominations, and breeder's rights grants, relating to the claimed plant variety;
- b) a copy of any publications or advertisements relating to sales, offers for sale, or public distributions of the claimed plant variety anywhere in the world if the sale, offer for sale, or public distribution occurred prior to the filing date of this application;
- c) any public information available regarding sales, offers for sale, or public distributions of the claimed plant variety anywhere in the world that occurred prior to the filing date of this application, including the date(s) and location(s)

The Office does not maintain a collection of Breeders' Rights documents and they are not readily obtainable electronically. It is reasonable to expect that Applicant or the assignee can readily obtain the requested documents and information.

The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. If an item required by the examiner is unknown to the applicant, a statement that the item is unknown to applicant will be accepted as a complete response to the requirement for that item. Where the applicant does not have and cannot readily obtain an item of required

information, a statement that the item cannot be readily obtained will be accepted as a complete response to the requirement for that item.

A complete reply must include a complete response to this requirement. The time period for reply to this requirement is 2 months.



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